

REMARKS

Based on the above amendments and following remarks, this application is deemed to be in condition for allowance and action to that end is respectfully requested.

Summary Of Amendments To Specification

Applicant has amended the specification to correct inadvertent typographical errors. No new matter has been added.

Summary Of Amendments To Claims

Applicant has amended the claims to more particularly define the invention and to claim additional aspects and features of the invention disclosed in the specification. No new matter has been added.

Response To Claim Rejections - 35 U.S.C. § 112

The Examiner rejected old claim 17 under 35 U.S.C. § 112, first paragraph, for using the terms "a first sub-container and a second sub-container". Applicant has now removed these terms from the claims. Accordingly, this rejection is overcome and withdrawal thereof is respectfully requested.

Response To Claim Rejections - 35 U.S.C. § 102

The Examiner rejected old claims 1-15, and 22-23 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,891,392 which issued to Monticello et al (Monticello).

For a claimed invention to be anticipated by a single prior art reference pursuant to 35 U.S.C. § 102(b), the reference must teach every aspect of the claimed invention either explicitly or impliedly. In other words, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." See Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant respectfully submits that Monticello fails to disclose, either expressly or inherently, each and every element set forth in the pending claims.

New claims 28 to 35 recite, *inter alia*, that the flash-dry disinfectant component comprises 10 to 30% by volume of an anti-microbial agent, which falls outside of the range of Monticello's compositions having between 0.1 to 1.5 % wt. of hydrogen peroxide.

New claims 36 to 43 recite, *inter alia*, that the flash-dry disinfectant component comprises 30 to 85% by volume of a flash vaporization component, which falls outside the range of Monticello's compositions having between 0.1 to 20 % wt. of alcohol.

Unlike Monticello's compositions, new claims 44 to 51 recite, *inter alia*, that the flash-dry disinfectant component be substantially free of a surfactant.

Based on the above remarks, Applicants respectfully submit that the claimed invention is novel over the applied prior art. More particularly, new claims 1-24 recite limitations that distinguish over Monticello. Accordingly, the rejection under 35 U.S.C. §102(e) is overcome and withdrawal thereof is respectfully requested.

Response To Claim Rejections - 35 U.S.C. § 103

The Examiner rejected old claims 16-20 and 27 under 35 U.S.C. 103(a) as being unpatentable over Monticello in view of U.S. Patent No. 5,665,332 which issued to Mundschenk et al (Mundschenk).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art references (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on an applicant's disclosure in the specification. See In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Applicant respectfully submits that the combination of Monticello and Mundschenk (whether or not they can be combined), fail to teach or suggest, either expressly or inherently, all the limitations of the claims.

As previously indicated, the pending claims recite either a flash-dry disinfectant component comprising either 10 to 30% by volume of an anti-microbial agent, 30 to 85%

by volume of a flash vaporization component or is substantially free of a surfactant.

Applicants have already shown that Monticello does not teach these limitations.

Accordingly, even if combined, Monticello and Mundschenk would not meet the claims at issue. More particularly, modifying Monticello in view of Mundschenk, or vice versa, would not yield Applicant's invention. These distinctions are respectfully submitted to be of patentable merit under 35 U.S.C. §103.

Based on the above remarks, Applicants respectfully submit that the claimed invention is unobvious over the applied prior art. More particularly, the claims recite limitations that distinguish over the combination of Monticello and Mundschenk (whether or not they can be combined) under 35 U.S.C. §103. Accordingly, the rejection under 35 U.S.C. § 103(a) is overcome and withdrawal thereof is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance and accordingly, allowance of the application is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

JUN. 6. 2003 3:18PM

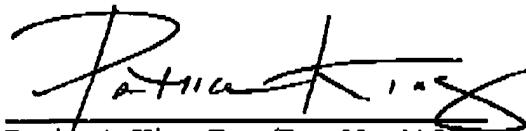
GOODWIN PROCTER

NO. 4826 P. 16/18

09/770,518

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to Deposit Account 06-0923. Applicant claims small entity status. See 37 C.F.R. 1.27.

Respectfully submitted for Applicants,



Patrice A. King, Esq. (Reg. No. 44,833)
Richard I. Samuel, Esq. (Reg. No. 24,435)
GOODWIN PROCTER LLP
7 Becker Farm Road
Roseland, New Jersey 07068
973 992 1990

FAX RECEIVED
JUN 9 2003
TC 1701

LIBNY/4204301.1

Page 14 of 14